

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**Case No.: 07 CV 3609**

ALVIN TOPOL,

**Judge: KOELTL**

Plaintiff,

**ANSWER**

-against-

OCEAN FROST CORP. and CARLOS  
CARANGUIMINCHALA,

Defendants.

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Defendants, **OCEAN FROST CORP. and CARLOS CARANGUIMINCHALA**, by their attorney, **BRUCE A. LAWRENCE, ESQ.**, as and for their answer to the plaintiff's complaint, alleges as follows:

1. Deny each and every allegation contained in paragraph designated "**1**" and "**4**" of the complaint herein **and respectfully refers all questions of law to this Honorable Court.**
2. Deny each and every allegation contained in paragraph designated "**3**", "**7**", "**8**", "**9**", "**10**", "**14**", "**15**", **second paragraph "12"**, **second paragraph "13"** and **second paragraph "14"** of the complaint herein.
3. Deny knowledge or information sufficient to form a belief with respect to the allegations of paragraphs "**13**" of the complaint herein.

**AS A FIRST SEPARATE AND COMPLETE  
AFFIRMATIVE DEFENSE TO PLAINTIFF'S  
CAUSE OF ACTION, DEFENDANTS  
ALLEGE UPON INFORMATION AND BELIEF THAT:**

4. Whatever damages the plaintiff, **ALVIN TOPOL**, may have sustained at the time and place mentioned in the complaint were caused, in whole or part, by the culpable conduct of said plaintiff. The amount of damages recovered, if any, shall therefore be diminished in the proportion to which the culpable conduct attributable to plaintiff bears to the culpable conduct, which caused the damages.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

5. That all the damages and risks incident to the situation mentioned in the complaint were open, obvious and apparent, and were known and assumed by the plaintiff, and his claims are barred by virtue of his assumption of the risks thereof.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

6. That the plaintiff has not sustained a serious injury as defined in sub-division (d) of Section 5102 of the Insurance Law of the State of New York, and an economic loss greater than the basic economic loss as defined in Section 5102, sub-division (a) of that law.

That by reason thereof, the plaintiff has no right to bring this action and he is barred thereby from maintaining and prosecuting this action.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

7. That, to the extent that the injuries of plaintiff, if any, were caused or contributed to, in whole or in part, by intervening and superseding causative factors, the claims of plaintiffs against this defendant should be barred.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

8. Upon information and belief, the plaintiff received remuneration and/or compensation for some or all of his claimed economic loss and accordingly, the defendant is entitled to have plaintiff's award, if any, reduced by the amount of that remuneration and/or compensation.

**WHEREFORE**, the defendants, **OCEAN FROST CORP. and CARLOS CARANGUIMINCHALA**, demand judgment dismissing the verified complaint or in the alternative, demand judgment over and against the Plaintiff on the basis of the apportionment of responsibility in such amounts as a jury or Court may direct together with the costs, disbursements and expenses of this action including attorney's fees.

Dated: Brooklyn, New York  
July 11, 2007

Yours, etc.

**BRUCE A. LAWRENCE, ESQ.**  
Attorney for Defendants  
**OCEAN FROST CORP. AND**  
**CARLOS CARANGUIMINCHALA**

By \_\_\_\_\_  
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